No. 80-0001

In The

Supreme Court of the United States

October Term, 1980

ANNA STANTON GREEN,

Petitioner,

vs.

ELIOT BARTHOLOMEW, ROBERT KLIPSTEIN, P. RAYMOND SIRIGNANO, PHILIP E. PUGSLEY, HARRY MOOREHEAD, JOSEPH CALIFANO, COMMISSIONER OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, AND THE UNITED STATES POST OFFICE, AND THE NEW YORK BANK FOR SAVINGS,

Respondents.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the Second Circuit

REPLY BRIEF FOR PETITIONER

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4068 LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing
South River, N.J. (201) 257-6850 New York, N.Y. (212) 840-9494 Philadelphia, Pa. (215) 563-5587 Washington, D.C. (202) 783-7288

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PRELIMINARY STATEMENT

Although the two respondents' briefs now before this Court are in the form of opposition to the petition for the writ of certiorari sought, in actual substance they are arguments for summarily affirming the opinions below whereby summary judgment was entered for them. Obviously, denial of the writ of

certiorari would thus be construed as such summary affirmance, which is what these respondents intend. Therefore, respondents' briefs provide no bona fide reasons for denying the writ.

DIFFERENCE IN QUESTIONS PRESENTED IN PETITION AND IN BRIEFS IN OPPOSITION

Of the four questions presented in the petition,[1] the first and last are ignored in respondents' counterstatements of questions presented, while the second and third are restated in different words with a significantly different constitutional interpretation. The questions presented by respondents disregard petitioner's First Amendment claim, and rely exclusively on what Mr. Justice Jackson called "the vagueness of the due process claim" in *Board of Education v. Barnette,* 319 U.S. 624 at 639 (*see* pp. 10-11 of the petition).

In this respect too, respondents thus provide no bona fide reason for denying the writ, but rather provide a reason for granting it.

REPLY TO COUNTERSTATEMENTS OF THE CASE IN BRIEFS FOR RESPONDENTS[2]

I. Factual Errors of Commission and Omission

A. Mrs. Green's Desire to Testify

Although John M. Perrone, Esq., after his *ex parte* designation by state court as guardian *ad litem* did indeed report, on November 15, 1977, that Mrs. Green (who was then unrepresented by counsel and unable to submit her own affidavit) "has expressed a desire not to attend the hearing scheduled for December 23, 1977" (99a), later, by her own attorney, she swore to a very different statement. In her own affidavit of May 24, 1978, she said:

> "I wish to have an opportunity to appear before the court to give personal expression to the Judge of whatever I say in this affidavit, in addition to reconsider the issues raised at the previous hearing.

> I had no idea in my earlier contacts with the conservator or my guardian *ad litem* of the seriousness of the application heretofore made herein and the consequences thereof." (129a).

She deposed similarly to the United States Court of Appeals in her affidavit of July 14, 1978:

> "I hereby request that I be heard in person and defendants be restrained and enjoined from preventing me from testifying and prosecuting this action" (296a).

On December 7, 1979 she personally attended the oral argument of her appeal, but was not personally heard.

B. Her Removal Not of Her Own Free Will

The version of Mrs. Green's removal given in the brief for respondents Bartholomew and Klipstein (4B&K) is contradicted by her in her affidavit of July 14, 1979:

> "I never came to Peekskill of my own free will, but was tricked into coming by ELIOT BARTHOLOMEW after he deprived me of my own apartment in Manhattan when I was temporarily at a local hospital." (297a).

C. Required Accounting Withheld

Notwithstanding the reported filing of an annual accounting for 1978 (4B&K), and formal request therefor for that year and 1979 by Mrs. Green's attorney, none has been received by her or her attorney. This is also in apparent total disregard of her express desire, stated in her affidavit of July 14, 1979, "to sue to recover" her own money which "they now have" and "prevent defendants from using my money to pay their legal expenses . . ." (295a-296a).

D. Respondent Moorehead's Non-Medical Argument

The brief for respondent Moorehead conceals the record of

his non-medical argument, and his collusion with respondents Bartholomew and Klipstein, mostly by omission.

First this brief adopts by reference the "comprehensive factual statement" in the brief for respondents Bartholomew and Klipstein "to avoid repetition." (2M). This is clearly non-medical argument and collusion.

Then this brief purports to set forth "additional facts" that "directly bear upon the involvement of respondent Harry Moorehead" (*id.*), but omits any substance, which substance includes the following:

(1) Dr. Moorehead testified that he examined Mrs. Green's mind. . . (but not) by touching or contact (but by conversation) . . . (and) could not tell the difference between the mind and the soul." (207a-208a, Crescenzi affirmation of February 8, 1979).

(2) Dr. Moorehead in his sworn affidavit of January 29, 1979, requesting summary judgment in his favor in the district court said:

> "The plaintiff [Mrs. Green] and her attorney have had their day in Court: Mr. Crescenzi has had ample opportunities to question the validity of psychiatry as a medical specialty. The prosecution of the present action against your deponent is vexatious." (353a-354a).

This non-medical argument — actually authoritarian fiat — is what is behind the briefs in opposition to the petition. These respondents thereby show: (1) that they have no substantive (or "medical") argument; and (2) that their only purpose is to silence petitioner, her attorney, and indeed all plain truth.

II. Procedural Misrepresentation

A. Of Claim of Constitutional Invalidity

Petitioner's constitutional claim is completely misrepresented in the briefs for respondents. They say that her

case: (1) "challenges the constitutionality of a state court's consideration of psychiatric testimony . . . for the appointment of a conservator" (1M); and (2) fails to argue against respondents' claim that "at all times Dr. Moorehead acted pursuant to a valid order of the New York Supreme Court." (4M).

Quite to the contrary, she is "seeking declaratory judgment and injunctive relief from Bartholomew and all co-defendants to declare unconstitutional Section 77.01 of the New York Mental Hygiene Law, as written or applied, enjoin their use of it against her." (p. 3 of petition). Her claim is that the entire state court proceeding is constitutionally invalid, including the state court order, and any purported "proofs of any kind, medical, psychiatric, or otherwise" (5B&K) — which is the very stuff of respondents' conspiracy — and that she alone may constitutionally manage her money and her life, free from respondents' governmental restraint.

B. On Personal Bias and Prejudice in Recusatory Application

Recusal was sought (p. 4 of petition) only from Judge Moore ("from the September motion panel, whose bias against Mrs. Green was then so evident") and from Judge Mansfield ("in view of their long records of decisions hostile to any relief from 'psychiatric' oppression").

The only relief sought from State Judge Sirignano is a judgment of constitutional invalidity of the Mental Hygiene statute applied by him. The brief for respondents Bartholomew and Klipstein, by Mr. Blum, falsely states that Judge Sirignano "has been charged with 'racketeering'." (11B&K), and further falsely states that also charged were "virtually every judge before whom any aspect of this case was heard." (*id.*) These sweeping inaccuracies serve as camouflage to cover up and dilute the plain record of Mr. Blum's personal and political ties to the Hon. Robert W. Sweet (p. 3 of petition), which was disclosed in Mr. Blum's own affidavit of September 13, 1979 (345a). Also thereby covered up is membership of State Appeals Judge Gulotta in an American Psychiatric Association branch (312a) while suing on

its behalf in his own court (307a) — a very relevant fact turned up quite incidentally by painstaking research in preparation for Mrs. Green's appeal.

REPLY TO REASONS DENYING THE WRIT IN BRIEFS OF RESPONDENTS

I. Mrs. Green's First Amendment Claim

Although this claim is well-documented in the petition (pp. 6, 10-11 and Appendix V), as well as in the original[3] complaint (142a) and amended complaint (1a) in paragraphs 4-15 thereof, and is based on the most serious scholarly legal and historical research, the briefs for respondents dispose of it with these epithets: "nonsense" (8B&K); "frivolous"; and "intellectual curiosity" (7M-8M) — the latter obviously meant pejoratively or invidiously.

Imposing a closed mind by the police power of the state on behalf of vested interests is precisely what the First Amendment was designed to prohibit; this alone is sufficient reason to accord this protection in this case.

II. Mrs. Green's Thirteenth Amendment Claim

Mr. Blum calls this claim "simply theater of the absurd." (8B&K, footnote).

Yet the very concept of an involuntary "conservatorship" (which surely is the case here) and from which Mrs. Green seeks relief, is deprivation of the essence of civil freedom, namely: to make and enforce contracts, to sue, be parties to suit, give evidence, inherit and bequeath, purchase, lease, sell and convey property, and deprivation thereof is a badge or incident of slavery or involuntary servitude, prohibited by the Thirteenth Amendment. It is undeniable that her estate is burdened thereby, involuntarily, with a servitude. *See* Black's Law Dictionary.

Very early the United States Circuit Court in California in *R.R. Tax Cases,* 13 F. 722 (1882) at 740 held that the Thirteenth Amendment by "the generality of its language makes its

prohibition apply to slavery of white men as well as that of black men; and also to serfage, vassalage . . . " ("vassal" — "a state of dependency" — Black's Law Dictionary). More recently this Court in *Jones v. Mayer Co.*, 392 U.S. 409, 430-432, relied on this very language from the Senate debate on the Amendment: "It would affirmatively secure for all men, whatever their race or color . . . the right to acquire property . . . to go and come at pleasure . . . to enforce rights in the courts . . . to inherit and dispose of property."

Mrs. Green claims these rights.

III. Mrs. Green's Fourteenth Amendment Claim

An *ex parte* order signed by State Judge Sirignano on November 21, 1977 against Mrs. Green (73a-76a) appointed John M. Perrone, Esq., to be her guardian *ad litem*; and without even service on her,[4] it ordered him and other respondents to show cause "why an order should not be made herein dispensing with the attendance of the said ANNA STANTON GREEN at the hearing or trial of the issues herein . . ." (75a). Although the challenged statute does not explicitly provide for it, this procedure is invariably used in the New York courts effecting thereby an irrevocable civil death. For such an order is invariably routinely signed when filed by an attorney, who in fact thereby exercises the only real discretionary power in the entire chain of proceedings thus unleashed.

Although the word "psychiatrist" is not even found in the challenged statute, in fact one is invariably named, thus becoming, as respondent Moorehead has in this case, the accepted authority thereunder. This is true in *every* sense.

First, the psychiatrist as "expert" is effectively the prosecutor (although nominally civil, the proceeding is substantively quasi-criminal,[5] as one by the state). Then the psychiatrist, again as "expert" on the purported specialized "facts" is effectively the jury (the right to a jury in such a proceeding, formally accorded by another statute, is effectively a dead letter).[6]

Mrs. Green has thus effectively been cast into the posture of a criminal defendant, but with no constitutionally required protective procedures, by an *ex parte* order, routinely signed. Thereby respondent Bartholomew gained control of her money, as he planned; and her bank (respondent New York Bank for Savings) not only did not challenge the state court proceeding on her behalf, but explicitly answered her that it "adopts all the arguments on behalf of defendants Bartholomew and Klipstein." (175a).

Respondents and the courts below call this due process. Mrs. Green does not.[7]

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

s/ Gene Crescenzi
Attorney for Petitioner

FOOTNOTES

1. The questions presented in the petition are as follows:

"1. Whether this Court's opinion in *Parham v. J.R.*, 442 U.S. 584 (June 20, 1979) may be lawfully applied by the United States Court of Appeals for the Second Circuit to petitioner, as a 94-year old, alert, able widow, and/or in the circumstances, as petitioner whose complaint was brought and dismissed prior thereto?

2. Whether petitioner has a constitutional right to protection from a state law as written or applied against her by respondents:

(a) To 'examine' or 'test' her *psyche*, whether defined as soul or mind, against her will, or otherwise replace the rule of law by the rule of pseudo-medicine, called 'psychiatry', in violation of the First Amendment;

(b) To take from her, her bank accounts, social security checks, revoked will, and liberty, in violation of the Fourteenth Amendment;

(c) To take from her the earned compensation for her past labor by currently subjecting her to a deprivation of liberty in violation of the Thirteenth and Fourteenth Amendments?

3. Whether petitioner may have redress by an action pursuant to Title 42 U.S.C. §1983, as a deprivation by respondents of her constitutionally secured rights, under color of law, and pursuant to Title 18 U.S.C. §1961, *et seq.* for triple damages from respondents' organized pattern of racketeering against her, under color of law, in violation of the State Penal Code?

4. Whether the opinion of the Court of Appeals for the Second Circuit is made legally invalid by improper procedures including:

(a) Assignment of judges and scheduling of hearing prejudicially by the court's assignment authority;

(b) Irreparably prejudicial striking-out of essential part of appendix of appellant (petitioner), by order of a single judge, the Hon. Walter R. Mansfield, before the appeal was considered;

(c) Disregard by the Hon. Walter R. Mansfield and the Hon. Leonard P. Moore of their obligation under Title 28

U.S.C. §455 to disqualify themselves when their impartiality might reasonably be questioned, as petitioner requested before the hearing of the appeal;

(d) In these circumstances, assessment of double costs to be paid by petitioner's attorney and statement in the opinion that all of this deserves reference to the Bar Association's Grievance Committee for disciplinary action?"

2. Parenthetical page references are as follows: numbers followed by the letter "a" are to Appellant's Appendix and Supplemental Appendix (pages are numbered consecutively in both) in the United States Court of Appeals for the Second Circuit (papers now filed in this Court); numbers followed by "B&K" are to brief for respondents Bartholomew and Klipstein in opposition to petition; numbers followed by "M" are to brief for respondent Moorehead in opposition to petition.

3. These paragraphs are as follows:

"4. The confessional faith, practice, persuasion or belief of defendants complained of herein is a cult that on information and belief constitutes a secular religion of the psyche; its believers or participants talk or confess or cause others to talk or confess to purported expert practitioners of the same, designated as psychiatrists, psychoanalysts, psychotherapists, or by other names, in what is called by them an examination or analysis; said practitioners in exchange for fees paid to them exercise an absolute tyranny through purported 'court orders' by providing official reports as a part of said religion of the psyche that legally disables any designated victim.

5. On information and belief, those who first called themselves psychiatrists took that name in the 19th century from Socrates' *iatros tes psuches,* a healer of the soul (*see* J.T. McNell, *A History of the Cure of Souls,* Harper & Row, 1951, p. 119; T.S. Szasz, *The Myth of Psychotherapy,* Doubleday, 1978, p. 27); they then first established their new profession in German universities as a medical practice, while imposed there by police authority, for political purposes, or for private wrongdoing enforced by the state.

6. On information and belief, the practice of said secular religion of the psyche is not a bona fide medical practice, but a secular version of a religious confessional, or "soul medicine;" and its practitioners, however named, are only a secular version of "soul curers" or "soul Physicians."

7 Plaintiff herein is aggrieved by defendants' practice of said secular religion of the psyche against her, as is more

particularly set forth below, and plaintiff is further aggrieved by defendants' conspiracy therefor, corruptly motivated for the purpose of divesting her of her property, or control thereof, to their profit as set forth below.

8. Plaintiff does not believe in, and has never voluntarily participated in said secular religion of the psyche, or in any of its practices or rites, whether named psychiatric, psychoanalytic, psychotherapeutic, psychological, or similar words.

9. Plaintiff declines to submit to said secular religion of the psyche however designated, and whether or not the practitioners thereof define psyche as soul or as mind; plaintiff declines to submit to any confessional practice thereunder or to any disclosure by her to any of them of her thoughts, or of her assets, reserving all such matters as being exclusively of her own conscience and concern, and in no way the lawful concern of any physician, or practitioner of any religion of the psyche imposed by any attorney-at-law or judge under the color of any law.

10. On information and belief neither the current use of physicians to diagnose the psyche (known as psychiatry), nor a former use of physicians to diagnose witchcraft, are bona fide medical practices, but both are equally the practices of superstitious religion, and the same is abhorrent to plaintiff herein, and is an illegal Inquisition.

11. On information and belief, when the First Amendment was adopted in the 18th century no medical practice then existed that claimed to be based on the psyche.

12. Upon information and belief a medical practice was first claimed to be based on the psyche in the 19th century; a medical label was then invented for this practice by using a Greek and unknown word, psyche; thereby, ancient soul salvationism religion pretended to be a medical practice, and so indispensable to public health that it had to be imposed by law.

13. Plaintiff is aggrieved that the plain language of the First Amendment, that no law shall be made respecting an establishment of religion, has in effect been violated by a nineteenth century word-trick, as shown, used against her by defendants herein.

14. Plaintiff asserts her First Amendment right not to be coerced by any law, or pretension thereof, into submitting to any religion of the psyche or confessional

practice thereof, and further claims the protection of the First Amendment as having been expressly adopted to prevent such coercion by any law, despite any later naming or renaming of any practice of religion as a medical practice.

15. Defendants are, directly or indirectly, engaged in, and profit from, said secular religion of the psyche, or have promoted same, or concealed wrongs of same, and have acted in concert to establish same, under the color of the law, and to impose same as a de facto religion or confessional test of the psyche, by corrupt practices, constituting what is commonly known as a protection racket, to plaintiff's grave prejudice and damage, and in violation of plaintiff's First Amendment right."

4. The text of the order to show cause has no provision for service thereof on Mrs. Green, despite a statement in the brief (2B&K) that "due notice" was served upon her.

5. Significantly, although Mrs. Green is clearly no criminal defendant, the district court, rejecting her claim that psychiatry is pseudo-medicine, held that it "is a bona fide aspect of the medical profession," offering as its sole reason therefor "criminal code provisions that permit and at times require the examination of a criminal defendant by a qualified psychiatrist." (p. 8 of petition).

6. Equally significantly, Mr. Justice Douglass, in his concurring opinion in *Schlagenhauf v. Holder,* 379 U.S. 104 (1964), very early perceptively observed that a psychiatrist's report of his private office "examination" may overawe a jury.

7. Moreover, respondents' arguments are not bona fide.

Inapplicable cases are cited (9B&K, 5M-6M), and misrepresented; *e.g. Parham v. J.R.,* 442 U.S. 584, to argue that it "is a case in which, as in many others, the Supreme Court has expressly identified the practice of psychiatry as a legitimate branch of medical science. . . ." One looks there in vain for such words, obviously read in for the authority desired. That is a *doctrinal* question, never presented or briefed, nor could it be constitutionally. A doctrinal clash, if any, arising here, must be incidental to petitioner's constitutional challenge. This challenge is to: (1) forensic *practice* of psychiatry, mental hygiene, etc., contrary to *petitioner's opinion* (which is far from frivolous, as research shows); and (2) "a judicial-type" (or any) "mental hygiene" hearing as itself constitutional violation aggrieving her.

The baseless disciplinary proceeding by Mr. Blum, in his own Bar Association Disciplinary Committee, were to delay preparation of the petition and this brief, not "to police its own bar." (11B&K).

Nearly half of the argument for respondent Moorehead (8M-9M) addresses a claim not before this Court: a psychiatric claim to judicial immunity. Rejected in the district court (Supp. App. VIII to petition, 34a), not considered on appeal, no party has presented this question in this Court.